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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 314/2012

DAULAT RAM KHULLAR Petitioner
Through Mr.C.L.Sachdeva and Ms.Garima
Sachdeva, Advocates

versus

DEHATI ENGG. WORKS Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
20.10.2016

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1. The present petition is filed under Article 227 of the Constitution of India seeking to impugn the order of the Rent Control Tribunal dated 29.11.2011 which in appeal reversed the order of the ARC and granted the benefit of Section 14(2) of the DRC Act to the respondent and set aside the eviction order dated 5.3.2011 in favour of the petitioner.
2. The basic facts are that the petitioner filed a petition for eviction under section 14(1)(a) of the Delhi Rent Control Act to seek eviction of the property being a portion of the factory building No.15, Najafgarh Road, Industrial Area, New Delhi as described in the Eviction Petition. It was stated that the property was rented to the respondent on a monthly rent of Rs.600/-. The respondent had not paid arrears of rent for the period 1.6.1987 upto 31.08.1991 @ Rs.600/- per month in spite of notice of demand dated 28.6.1991 as per Section 14 (1) (a) of the DRC Act.
3. An order was passed by the ARC under section 15(1) of the DRC Act

on 22.8.1996 directing the respondent to pay the arrears of rent and to continue to pay the rent month by month.

4. The case of the petitioner was that despite the said order the respondent stopped coming to court and did not pay the arrears of rent. The respondents were proceeded ex parte on 27.1.1999. On 19.7.2000 an ex parte eviction order was passed in favour of the petitioners. The respondent filed an application under Order 9 Rule 13 CPC which was also dismissed on 31.10.2001. Thereafter the respondent filed an appeal before the Rent Control Tribunal. The Rent Control Tribunal dismissed the appeal vide order dated 03.08.2004. The respondent thereafter filed petition under Article 227 before this Court being CM(M) 1090/2004. This court noted the averments of the respondent that they had been duped and cheated by their counsel to whom they have been regularly paying rentals. They have also said to have filed a complaint before the Bar council against the counsel. Based on the fact that in another matter on similar facts the ex parte orders were set aside, this court by order dated 5.5.2009 set aside the order dated 3.8.2004 of the Tribunal, order dated 31.10.2001 and the ex parte decree dated 19.7.2000 of the ARC. The matter was remanded back to the trial court to decide the eviction petition in accordance with law.

5. After remanding back the matter, the ARC by its order dated 5.3.2011 noted that the respondent has admitted the relationship of landlord tenant and the rate of rent. It also noted that there is a default in payment of rent by the respondent and passed an eviction order under section 14(1)(a) of the DRC Act.

6. Against the said order the respondent filed an appeal before the Rent Tribunal. The Tribunal in the impugned order noted that on 28.12.2001

deposit was made by the respondent in compliance of the order of the Tribunal while staying the execution of ex parte eviction order. It also noted that this court in CM(M)1090/2004 dated 5.5.2009 accepted the petition of the respondent and set aside the ex parte eviction order. It held that in letter and spirit the effect of the order of this Court was that the delay in filing the rent stood condoned. Otherwise there was no reason/opportunity to set aside the eviction order passed by the ARC.

7. Learned counsel appearing for the petitioner has pointed out that there has been a default in payment of rent since 1.5.1988. He submits that pursuant to interim orders passed by the Tribunal which has been relied upon in the impugned order dated 28.12.2001 only Rs.1 lac was deposited. Thereafter the respondent has made no payment of rent in terms of Section 15 (1) of the DRC Act. It is urged that on the basis of these, there is a default on the part of the respondent and the Tribunal has wrongly concluded that delay has been condoned by this Court.

8. It is clear from the impugned order that the Tribunal has not gone into the issue of default by the respondent in paying the monthly rent in compliance of order under Section 15 (1) of the DRC Act dated 22.8.1996. Merely because some amount was deposited on the order of the tribunal, the tribunal has come to a conclusion that rent has been paid and delay in payment of the rent has been condoned by the High Court vide order dated 5.5.2009.

9. A perusal of the order of this court dated 5.5.2009 does not show any such condonation of delay by this court. It only noted as follows:-

“..Having heard the parties and keeping in view the fact that in the case of a similarly placed tenant like the

petitioner who had alleged that he had also been duped by the same lawyer Mr. Bajwa, this Court vide its order dated 31st August, 2004 passed in CM (M) 1084/2004 titled M/s. Capital Corrugating Industries v. Shri Daulat Ram Khullar Gujranwalla Trust, Phillaur had allowed the tenant's application under Order 9 Rule 13 CPC, in my opinion, ends of justice would be met if impugned order dated 3rd August, 2004 passed by Tribunal as well as order dated 31st October, 2001 passed by the ARC and ex parte eviction decree dated 19th July, 2000 are set aside.

However, keeping in view the fact that eviction petition had been filed by respondent/landlord on 14th October, 1991, I direct ARC to dispose of the same as expeditiously as possible preferably within a period of six months from today. Needless to say that ARC would decide the eviction petition in accordance with law without being influenced by any observations of this Court..."

10. The above observations of the High Court do not show any satisfaction being recorded of payment of rent or condonation of delay in having deposited the rent in court by the respondent.

11. A perusal of the order passed by the ARC dated 5.3.2011 shows that it came to the conclusion that there is default in payment of rent by the respondent. It noted that the main contention of the respondent is that he has paid rent upto 13.04.1988 and has spent Rs.5,000/- which is to be adjusted in the rent from 01.05.1988 to 31.05.1988. In cross-examination, RW1 admitted that the rent has not been paid since 01.06.1987. Hence, the ARC noted that there is an admission about the non-payment of rent. It also noted that the respondent had failed to show that there were any basis for seeking adjustment of Rs.5,000/- allegedly spent on preparing the floor. Hence, the

conclusion of the ARC that there is a default in payment of the rent. The Rent Control Tribunal has without giving cogent reasons set aside the said finding of fact recorded by the ARC. This finding was based on a misinterpretation of the order of this court dated 05.05.2009.

12. A perusal of the record shows that there were no basis to interfere with the finding recorded by the ARC. The finding recorded by the ARC is supported by the evidence of RW1 Shri Santokh Singh who has stated as follows:-

“..It is correct that I have not paid the rent since 1987. Since 01.06.87 I have not paid the rent but the rent was tendered as the same was not accepted by the petitioner, I have deposited the same in the Court. I paid the rent to my counsel but he did not deposit the same in the court, so I filed a complaint against the counsel with the bar council, therefore, I withdrew the complaint as the counsel apologized before me. It is correct that I deposited the rent when the court passed an order. I deposited the rent in the court of tribunal at the time of filing an appeal.

At present I have no receipt of deposit of rent from 01.06.87 but I have to look my records. It is wrong to suggest that my affidavit filed by me is not correct.”

13. The cross-examination clearly shows that the respondent has failed to show payment of the agreed rent of Rs.600/- per month w.e.f. 01.06.1987 or that the petitioner is tendering the rent on a regular basis month to month.

14. Learned counsel for the petitioner has also pointed out that the tenant has expired and is being represented by his LRs all of whom are settled abroad. The premises is lying locked for the last several years.

15. The impugned order suffers from material illegality and irregularity. Without any evidence whatsoever on record it has set aside the order of the

ARC recording a finding of default in payment of rent. The order of Rent Control Tribunal dated 29.11.2011 suffers from material illegality. Same is set aside and the order of ARC dated 5.3.2011 passing an order of eviction under section 14(1)(a) is restored.

16. Petition stands disposed of. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

OCTOBER 20, 2016

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